

Appl. No. 09/543,227

REMARKS/ARGUMENTS

Thorough examination and careful review of the application by the Examiner is noted and appreciated.

The examiner has withdrawn the finality of the previous Office action pursuant to 37 CFR 1.114 and has entered Applicant's submission filed on February 13, 2004 (after-final amendment).

The examiner withdrew the previous objection to claim 29 in light of Applicant's amendment of claim 29.

The examiner withdrew the previous rejection under 35 U.S.C. §112, 2nd paragraph in light of Applicant's amendment to claim 23.

The examiner objected to an informality in claim 29.

The examiner rejected claims 3-67 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Examiner rejected claim 21 under 35 U.S.C. §102(b).

Examiner rejected claims 1-6 and 22-34 under 35 U.S.C. §103(a).

By way of the foregoing amendments, claims 1, 3, 21, 23, 28-29, and 34 have been amended, and claim 35 has been newly added.

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Accordingly, upon entry of this Response, Claims 1-6, and 21-35 are pending.

The changes in the claims do not introduce new matter but clarify matters shown and described in the application as filed. The foregoing amendments and following remarks are believed to be fully responsive to the Office Action mailed June 9, 2004 and render all currently pending claims at issue patentably distinct over the references cited by the Examiner.

The foregoing amendments are taken in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled in view of the prior art. Reconsideration and examination of this application is respectfully requested in light of the foregoing amendments and the following remarks.

EXAMINER'S OFFICE ACTION

In the June 8, 2004 Office Action (hereinafter "OA"), the Examiner:

objected to an informality in claim 29;

rejected claims 23-27 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention;

rejected claim 21 under 35 U.S.C. §102(b) as being anticipated by Ford Motor Company's Best Practice Replication (BPR) Process and public use ; and

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rejected claims 1-6 and 22-34 under 35 U.S.C. §103(a) as being obvious over references citing Ford Motor Company's BPR process.

Claim Rejections under 35 U.S.C. §112

The examiner rejected claims 3-6 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As stated in page 3, clause 5 of the OA: "Claim 3 recites that awards "may be selected." The term "may be" is vague and indefinite since it is not clear whether or not the awards are actually selected. The claimed invention should be positively recited."

Accordingly, claim 3 has been amended from "said awards **may be** selected from" to "said awards **are** selected from""

Thus, the selection of awards is positively recited and accordingly, the rejection of claim 3 and of claims 4-6 which depend from claim 3 is obviated.

Claim Rejections Under 35 USC § 102(b)

Claim 21 is rejected under 35 USC § 102(b) as being anticipated by an on-sale bar and Ford Motor Company's Best Practice Replication (BPR) Process, as disclosed in the following references:

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1. FGTI - Best Practice Replication Process (BPR) Web Site" (retrieved from <http://www.fordbetterideas.com/tc/main/featuredtech/best.htm> on August 22, 2003, stating that "development is complete and implementation at Ford Motor Company began in 1996, page 2, hereinafter (BPR web-site);
2. Anthes, "Defending Knowledge" (published February 16, 1998), (hereinafter "Defending Knowledge");
3. Anthes, "Learning How to Share" (published February 23, 1998), (hereinafter "Learning How to Share");
4. "Ford Connecting to Consumers Via E-Business" (published September 15, 1999, stating that the BPR program has been in effect since 1996, ¶23), (hereinafter "E-Business");
5. Dixon, "The Changing Face of Knowledge" (published 1999, describing Ford's Best Practice Replication system, which has been in existence since 1996) (hereinafter "Changing Face of Knowledge");
6. Ford Motor Company's "Best Practice Replication Manual (copyright 2002).

Claim 21 has been amended to further define the preliminary concept step of providing a plurality of concept proposals, **wherein the non-implemented preliminary concept is a concept that has not been previously implemented.**

Applicant's Specification, page 11, lines 10-24 provides support for amending Claim 21 as follows:

"The lead technology group or team then generates alternative approaches to address the customer need. Particularly, the group analyzes and **determines**

alternative technologies or approaches which hold promise for the need. The group then analyzes all of the **potential** and viable approaches to estimate the amount of company development (including company resources and time) required to address the need by use of each of the various potential approaches.

The group next accesses the technical merit of each approach. . . . **The group reviews preliminary concepts** [i.e. non-implemented] and selects the most promising **concepts** based upon their analysis."

Additional support for the "non-implemented preliminary concept" is provided in the Pending Application as follows:

page 4, lines 25-26: "[A] method 16 [is provided] for **developing**, organizing and **implementing** the project in different phases 24-32; and

page 7, lines 2-8: "[M]ethod 16 "carries out" or executes projects 12 in five stages or phases 24-32. Particularly, the project phases are the **concept proposal stage** 24, the concept feasibility phase 26, the manufacturing concept ready phase 28, the **manufacturing implementation ready phase** 30, and the replication phase 32."

Webster's New World College Dictionary, Fourth Edition, 2001 defines a "concept" as follows:

"concept (kan'sept') n.

1. an idea or thought, esp. a generalized idea of a thing or class of things; abstract notion 2 a) an original idea, design, et.; conception b) a central or unifying idea or theme (often used attributively) - Syn. IDEA"

The present invention is directed to developing a project, not only limited to replicating finished project.

The present invention develops a manufacturing project, by providing an initial concept proposal that inherently means not already proven.

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Examiner contends that the best practice proposal of the BPR system is the same as a concept proposal of the present invention. The BPR best practice proposal is a best practice already implemented at one location sent to another user of the best practice replication system in a different location. Nothing suggests in the Learning to Share or the BPR that a "best practice proposal" is not an already implemented best practice that is in use in one location and is proposed for use in another location. The best practice would not be a "best practice" without being proven first. Thus, while parts of the company may non yet have implemented an already proven "best practice" in one location, a best practice exists in another location and a recipient of the best practice can then implement a best practice.

There is a difference between the present invention's concept proposal, i.e., proposal of an idea that has never before been implemented in any location, and the BPR's already proven and implemented best practice at least in one location.

Examiner equates the "best practice proposal" of the BPR process with the "concept proposal" of the present invention. The BPR process provides steps for what occurs after a project has already been developed and implemented, i.e. a well-documented and proven process. As discussed supra, a "best practice" as defined within the BPR manual is a practice that has already been proven and **implemented**. See BPR, Chapter 1, page 1-2 ("[A] Best Practice Is . . . **a proven experience**"). The BPR process compares a current proven practice with another practice to determine if it is a "best practice".

"Ford's BPR program begins with a person or group putting a description of its practice into an Oracle Corp. database at Ford's BPR intranet Web site. Human review and some software filters then "cull out the gems" and send them around the company, but only to those units for which each is appropriate. A new way to apply paint might go only to paint shops, for example.

Recipients [i.e. customers] of these best-practice proposals are expected to reply to the Web site as to whether they intend to implement them and, if so, what they expect the resulting cost savings to be."

Learning to Share, paragraphs 41-42.

Thus, the best-practice proposal to which Examiner refers to in the Learning to Share reference is the same as a proposed replication of an already implemented best practice that is used in one location to another location. The best practice proposal thus, is merely a replication of an already implemented "best practice". Because BPR, to which Learning to Share refers, only uses already proven and implemented practices, it would be contrary to the teachings of both BPR and Learning to share to input non-proven, non-implemented preliminary concepts into a database. The recipients of the "best practice proposals" are recipients of best practices that have been implemented throughout the company in at least one location. Thus, a best practice proposal is not synonymous with a preliminary "concept" proposal, where a concept is a non-proven, never before or previously implemented idea.

Unlike the previously implemented best practices detailed in the BPR manual, a concept proposal, i.e. "idea" proposal, of the present invention is a non-implemented manufacturing technology, process, or method.

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The BPR method and associated cited references refer to replicating already formed and implemented "best practices" and fail to provide a method of initially developing a best practice from a non-proven or implemented "concept".

Additionally, Claim 35, which depends upon Claim 21, was added to further define the preliminary concept, wherein the previously non-implemented preliminary concept is created in response to a customer need.

Thus, concepts are created in response to a customer need. See Applicant's Specification, page 9, lines 7-9 ("The concept proposal phase 24 begins when a customer need has been defined, and concludes when the project has been approved for concept feasibility analysis.")

Because previously non-implemented concepts are created in response to a customer need, it is inherent that the concept is not already implemented and proven because the concept is an idea created to address the needs of a customer. Users of the BPR method enter "best practices" into an intranet and then transmit the best practices to recipients, i.e. customers. However, unlike the preliminary concept proposal of the present invention, the initial "best practice" is not created specifically in response to a recipient customer's needs, but rather is used by the workforce to improve operations within a facility.

Thus, neither the BPR, nor the other references cited herein discussing the BPR anticipate Claim 35.

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According to MPEP § 706.02, anticipation under 35 U.S.C. §102 requires that "the reference must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present." Here, the references cited herein fail. In particular the BPR manual reference does not teach, suggest, or even remotely hint that best practice be a mere idea or a "concept proposal". Furthermore, the "best practice" must have been a previously implemented practice and cannot be in an initial unproven or previously non-implemented state such as the concept proposal of the present invention. Additionally, the BPR manual reference does not teach, suggest, or even remotely hint that a non-specific "best practice" be generated. Thus, the present invention, as set forth in the now amended claim 21, is clearly distinct from the art of record.

Furthermore, the art which has not been applied herein, but which has been reviewed, fails to disclose this feature of the present invention.

Additionally with regard to the 102(b) on sale bar, in light of amendments to claim 21, the on sale bar rejection based on the BPR reference is rendered moot.

With regard to Claims 22-27, Claims 22-27 depend upon independent Claim 21. In light of Examiner's reliance on the references cited herein, supra, amendment of independent Claim 21, from which claims 22-27 renders Examiner's rejection moot. As discussed above, Claim 21 is patentably distinguishable over the references cited herein.

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Thus, the rejections under 35 USC § 102 are obviated.

Claim Rejections Under 35 USC § 103

Claims 1-6 , and 22-34 are rejected under 35 USC § 102(b) as being obvious over Ford Motor Company's Best Practice Replication (BPR) Process, as disclosed in the following references:

1. FGTI - Best Practice Replication Process (BPR) Web Site" (retrieved from <http://www.fordbetterideas.com/tc/main/featuredtech/best.htm> on August 22, 2003, stating that "development is complete and implementation at Ford Motor Company began in 1996, page 2, hereinafter (BPR web-site);
2. Anthes, "Defending Knowledge" (published February 16, 1998), (hereinafter "Defending Knowledge");
3. Anthes, "Learning How to Share" (published February 23, 1998), (hereinafter "Learning How to Share");
4. "Ford Connecting to Consumers Via E-Business" (published September 15, 1999, stating that the BPR program has been in effect since 1996, ¶23), (hereinafter "E-Business"); and
5. Dixon, "The Changing Face of Knowledge" (published 1999, describing Ford's Best Practice Replication system, which has been in existence since 1996) (hereinafter "Changing Face of Knowledge").

Examiner rejected claims portions of claims 1, 3, 29, and 30 based on Examiner's Official Notice of the method steps cited therein.

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The rejection of Claims 1-6 and 22-34 under 35 U.S.C. §103(a) based on the 5 above-cited references, and Examiner's Official Notice is respectfully traversed.

Claim 1 has been amended in a similar manner as Claim 21 to further define the preliminary concept step of providing a plurality of concept proposals, wherein the non-implemented preliminary concept is a concept that has not been previously implemented.

The arguments for novelty of claim 21, as amended, over BPR and associated references citing the BPR method do not differ from those in the above used in defense of claim 21, as amended: the other references do not teach use of a non-implemented preliminary concept that has not been previously implemented. Taking official notice of a simulation process does not affect those arguments since a simulation process is related to a feasibility study and does not disclose or teach use of a non-implemented preliminary concept that has not been implemented.

Amended Claim 3 further defines the steps of:
providing career development that advances the workforce along career paths to become technical specialists and training processes for said workforce; and

providing reward and recognition processes for said workforce, wherein the step of providing reward and recognition processes for said workforce further comprises recognizing technical and non-technical contributions by the team, wherein said awards are selected from at least one of

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technology awards, technical achievement awards, operational excellence awards, and **patent incentive awards**.

Support for amending Claim 3 is disclosed in Applicant's Specification, page 5, lines 23-36 through page 6, lines 1-8:

"In block or step 44, employees engage in career development and training processes. Particularly, career path information is provided to employees so that they are aware of their potential for advancement within the company and the goals that they will need to meet to achieve the advancement. In the preferred embodiment, personnel development committees are formed to assist in providing the employees with career path information. Employees are further provided with opportunities to advance along their career paths and become technical specialists by meeting certain predetermined objective performance standards and/or by achieving certain goals."

Regarding Claim 3, the OA, page 14 states "Training is provided to the employees regarding use of the Best Practice Replication Process and implementation of the best practices." Unlike the very specialized training provided in the BPR regarding use and implementation of Best Practice Replication Processes, the training provided by the present invention is much broader and allows the workforce to become technical specialists to advance their career paths. No such career path training is provided by the BPR method. Additionally, an employee may not necessarily gain a "technical specialist" status by virtue of training on the use of the BPR method alone. Therefore the training provided by the method of the present invention is much

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broader than the training provided by the BPR method and allows an employee of the workforce employing the methods of the present invention further opportunity for advancement along a developed career path.

Examiner takes official notice of patent incentive awards. "It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known." MPEP 2144.03 (Rev. 2, May 2004).

The reason that awards are provided is to reward team contributions and foster innovation. See Applicant's Specification, page 32, lines 6-9 ("Phase 32 ends with step 116 or the rewards and the recognition sub-phase. In step 116, the team rewards and recognizes outstanding technical and non-technical contributions by the team.").

Additionally, Applicant's Specification, page 6, lines 12-20 discloses: "Block or step 46 represents certain employee reward and recognition processes. In block or step 46, employees are rewarded and recognized for technical and non-technical contributions. For example and without limitation, deserving employees may earn technology awards, technical achievement awards, operational excellence awards, and patent incentive awards. Employees may also be recognized and/or rewarded for outstanding contributions to external customers and for personal recognition."

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Additionally, the benefits of such a recognition and reward process are disclosed Applicant's Specification, page 6, lines 22-26 through page 7, line 1: "Benefits of such a reward and recognition process include "an empowered, highly skilled and motivated workforce, as illustrated in block 48. By use of this workforce, projects can be developed, implemented and performed more quickly, efficiently, and with a higher degree of quality."

On page 17 of 8-28-2003 OA, and page 17 of the present OA, Examiner equates pressure applied to employees to provide "best practices" with the award and recognition process of the present invention. The examiner states that "More pressure is placed on plants with fewer suggestions to contribute some more suggested practices. Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to implement the step of providing reward and recognition processes for said workforce with Ford's BPR Process in order to encourage employees to be more productive and effective in meeting company goals, such as submitting and implementing (i.e. replicating) identified best practices."

The reasoning that examiner used to equate "pressure" with rewards is impermissible hindsight reasoning. It is unclear in the "Changing Face of Knowledge" reference what tactics are used to "pressure" the plants. It is possible that incentives could be used, however, it is also possible that negative enforcement could also be used to increase productivity. Additionally, Examiner's Official Notice does not extend to providing awards such as patent incentive awards because the best practices disclosed in the Changing Face of Knowledge, referencing Ford's BPR process, have already been implemented and developing a new

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best practice would not be equivalent to providing a novel concept proposal as discussed supra. Thus, an already implemented best practice would not be considered novel and nonobvious and deserving of a patent incentive award.

The BPR manual fails to teach, or suggest an award and recognition process having the benefits provided by the present invention. The BPR manual only recognizes adherence to BP or suggestions to best practices, but does not specifically recognize both technical and non-technical contributions by the team and especially does not provide technology awards, technical achievement awards, operational excellence awards, and patent incentive awards.

Therefore because official notice of awards as "pressure" is not "notice of facts beyond the record which may be taken by the examiner [to be] "capable of such instant and unquestionable demonstration as to defy disputes", the rejection should be removed.

"If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding."

MPEP 2144.03 (Rev. 2, May 2004).

"It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection was based."

MPEP 2144.03 (Rev. 2, May 2004).

Applicant traverses Examiner's Official Notice based on implementing the step of providing reward and recognition processes for said workforce with Ford's BPR. Applicant first

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traversed the rejection in Applicant's February 13, 2004 Response, clearly showing dispute between "pressure" and incentive. Because Examiner did not provide documentary evidence in the present OA after Applicant traversed the Official Notice in the previous 8-23-2003 OA, then the rejection should not be maintained.

"If applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained."

MPEP 2144.03 (Rev. 2, May 2004).

With regard to claims 22-31 which depend from claim 21, claim 21 has been amended, see 102(b) discussion supra, to more particularly define a concept proposal process of the present invention. Thus, Claim 21, and the claims depending therefrom are distinct from the references of record.

With regard to claim 23, claim 23 has been added to further define best in class technology as **an existing product or process that clearly represents superior value to a customer relative to all similar products or processes**. See Applicant's Specification, page 10, lines 22-25.

On page 23 of the present OA, examiner takes Official Notice of the step of identifying a best in-class technology. However, without further documentation, not including Applicant's Specification, the term best in class technology may not be "capable of such instant and unquestionable demonstration as to defy disputes."

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Thus, Applicant traverses Examiner's use of Official Notice regarding the step of identifying a best in-class technology

"Best in class" technology is "the existing product or process which clearly represents superior value to the customer, relative to all similar products or processes." Applicant's Specification, page 10, lines 22-25.

Applicant in Applicant's Specification in accordance with Applicant's right to be his or her own lexicographer defines the definition for best in class technology. However, the term "best in class technology" as used by Applicant may not be universally defined as Applicant has so defined the term, and may thus, have a different definition in a different reference.

With regard to amended Claims 28-29, Claims 28-29, which both depend from claim 1, further define the step of providing unique requirements wherein said unique requirements for each replication site are selected from projected intellectual property rights and regulatory requirements.

Support for amending claims 28-29 is disclosed in Applicant's Specification, page 21, lines 19-26 as follows:

"The group then reviews intellectual and regulatory requirements. The group begins by reviewing processes and technology for innovation and issue invention and disclosure, or for projected intellectual property rights as appropriate. The group reviews conformance of the process to applicable corporate and government codes, standards, and laws concerning health, safety, environment, and industrial hygiene."

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No such unique requirements for each replication site that include projected intellectual property rights and regulatory requirements are taught or suggested in the BPR.

Applicant traverses Examiner's Official Notice with regard to unique requirements because the unique requirements cited by Examiner were limited to health and safety issues within a facility in accordance with OSHA guidelines. The official notice does not cite a reference or source that teaches conformance to potential intellectual property rights and to applicable regulatory laws when considering replicating a developed concept proposal. Applicant requests that Examiner provide such a reference in accordance with the requirements of MPEP 2144.03 (Rev. 2, May 2004).

With further regard to claim 28, Claim 28 provides the step of **establishing an issues deck to document new data that would be useful for replication planning.**

Claim 28 addresses use of an issues deck that documents new data useful in replication planning. "The team establishes an issues deck to document new data that would be useful for replication planning." Applicant's Specification, page 27, lines 7-9.

The issues deck and documented data associated with the present invention are not limited only to benefits of the concept proposal. The concept proposals of the present invention are under development throughout the process of the present invention, and thus, each concept proposal is a work in progress that have data relating to development of the process, including

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problems with the process and also is constantly being documented and improved upon by providing an issues deck. Unlike the present invention, the BPR does not need to define an issues deck because the BPR uses established proven "best practices" that are not under development. "WHAT a Best Practice is not . . . "not intended to record failures resulting from not following process or discipline, not an editorial page, not a report of individual experiences, not a tip or technique." BPR, Chapter 1, page 1-2. Thus, the BPR teaches away from using an issues deck of the present invention that uses data possibly relating to recorded failures, editorials regarding the proposal and tips or techniques regarding development of the proposal.

Regarding Claim 28, the present OA, page 18, states "A proposed practice is created into a proposal that is distributed to the most appropriate parts of the company. Since only select parts of the company are chosen, this implies that these chosen sites/facilities are given priority over others for implementation of a replication plan."

The statement on page 18 of the present OA stating that "only select parts of the company are chosen" regarding the Changing Face of Knowledge reference that discusses the BPR method is contradictory to the plain language of the Changing Face of Knowledge reference. Changing Face of Knowledge, paragraph 9 clearly discloses: "Through an internal internet, a few practices a week are **sent to all of the plants.**" Thus, according to the teachings of the BPR and the Changing Face of Knowledge, no prioritization of replication sites is performed in accordance with a confirmed replication plan as disclosed in Applicant's Claim 1 and 28.

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BPR, as taught by the Changing Face of Knowledge reference encourages uniformity and sending best practice to all locations, thus sent to recipients at all locations, no implication is given that some facilities are "chosen" or "given priority over others", unlike the present invention which selectively chooses which site is to be replicated.

Claim 34 was added to further define the step of establishing failure modes, wherein the failure modes are **based on long term performance criteria, wherein said long term performance criteria is selected from at least one of process potential, process potential with customer concurrence, a mean time between failures, and a mean time to repair.**

Support for amending claim 34 is disclosed in Applicant's Specification, page 28, lines 9-13 as follows:

"[T]he group establishes long-term performance criteria such as process potential ("Ppk"), process potential with customer concurrence ("Cpk"), mean time between failure ("MTBF"), and mean time to repair ("MTTR") for use with future plans.

No such long-term performance criteria are taught in the BPR method or references. Essentially, claim 34 defines a method of documenting failure modes and prevention that is not taught or suggested in the BPR manual reference. Instead, the BPR manual reference teaches away from documenting failure modes and thus, cannot render claim 33 obvious. See BPR manual, chapter 1, page 1-3, ("What a Best Practice is Not . . . **.NOT intended to**

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record failures resulting from NOT following process or discipline.").

Thus, claim 34 is patentably distinct from the prior art of record."

The prior art of record herein, whether considered alone or in combination, does not show or suggest or render obvious the method for developing and performing a manufacturing project as required by independent Claims 1 and 21.

The references cited herein do not recite, disclose, teach or suggest the claimed features of Claims 1 and 21.

The foregoing amendments further clarified some of the features of the method for developing and performing a manufacturing project. It is believed that the present invention as amended is novel and non-obvious over the references relied upon by the Examiner.

Independent Claim 1 has been amended to further define the invention. Therefore, Claim 1 is now believed to patentably define over the prior art relied upon by the Examiner. Additionally, Claims 2-6, and 28-35 which depend from Claim 1 are also believed to be patentable over the prior art relied upon by the Examiner for the same reasons that Claim 1 from which they depend is also patentable.

Independent Claim 21 has been amended to further define the invention. Therefore, Claim 21 is now believed to patentably define over the prior art relied upon by the Examiner. Additionally, Claims 22-31 which depend from Claim 21 are also

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believed to be patentable over the prior art relied upon by the Examiner for the same reasons that Claim 21 is also patentable.

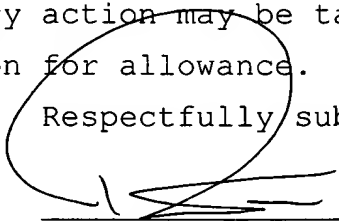
A reconsideration for allowance of these claims is respectfully requested of the Examiner.

Based on the foregoing, the Applicant respectfully submits that all of the pending claims, i.e. claims 1-6, 21-35 are now in condition for allowance. Such favorable action by the Examiner at an early date is respectfully solicited.

If for some reason Applicant has not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge our Deposit Account No.06-1510 for any fee which may be due.

In the event that the present invention is not in a condition for allowance for any other reasons, the Examiner is respectfully invited to call the Applicant's representative at his Bloomfield Hills, Michigan office at (248) 540-4040 such that necessary action may be taken to place the application in a condition for allowance.

Respectfully submitted,



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